IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 612 of 1985
with
FIRST APPEALS No.613 & 614 of 1985

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUAJRAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
SHAH RAMESHCHANDRA MULJIBHAI & 2 - Defendant(s)

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Appearance :

MR MD PANDYA for the appellant.
NOTICE SERVED to the respondents.

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CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date : 04/08/2005

ORAL JUDGMENT

1. This set of appeals arises out of a common judgment

and awards rendered by Motor Accident Claims Tribunal (Main), at Vadodara, on 31st July, 1984.

1.1 First Appeal No.612 of 1985 arises out of judgment and award in Motor Accident Claim Petition No.411 of 1982; First Appeal No.613 of 1985 arises out of judgment and award in Motor Accident Claim Petition No.412 of 1982; and First Appeal No.614 of 1985 arises out of judgment and award in Motor Accident Claim Petition No.413 of 1982.

2. The claim applications arose out of a vehicular accident that occurred on 17th May, 1982, involving scooter bearing registration No.GAF 7564 and bus bearing registration No.GRT 8059. One Rameshchandra Muljibhai Shah was riding his scooter-GAF 7564 on the Dabhoi-Baroda road along with his wife, Jasumatiben, and minor son, Milind, travelling as pillion riders. After crossing the junction of Rhushi Prem Vardhan Ashram, near Fartikui, they met with an accident. According to them, they were knocked down from behind by S.T. Bus bearing No.GRT 8059, enroute Ahmedabad from Rajpipla. Both the pillion riders sustained severe injuries and died on-the-spot. Rider, Rameschandra, also sustained injuries.

3. Motor Accident Claim Petition No.411 of 1982 was

preferred by Rameshchandra and his daughter claiming compensation of Rs.1 lakh, by way of compensation on account of death of Jasumatiben.

3.1 Motor Accident Claim Petiiton No.412 of 1982 was preferred by Rameshchandra, on account of death of minor-Milind, claiming compensation of Rs.70,000/-, by way of compensation.

3.2 Motor Accident Claim Petition No.413 of 1982 was preferred by Rameshchandra claiming compensation of Rs.9,000/- for injuries sustained by him.

4. Since all the three claim applications arose out of the same accident, they were amalgamated and tried together and were disposed of by a common judgment. This Court also has heard these matters together and they are being disposed of by this common judgment.

4.1 For the sake of convenience, original claimants-respondents herein are referred to as "**the claimants**" and the appellant is referred to as "**the opponent**" in this judgment.

5. Learned Advocate, Mr. Pandya, appears for the appellant. The respondents, though served with notice, have

chosen not to contest the appeal.

6. Learned Advocate, Mr. Pandya, submitted that the Tribunal has erred in appreciating the evidence on negligence aspect. He submitted that the scooterist had approached the main road from a sub-road and was to take a left turn. He, therefore, owed a greater degree of care while approaching the main road. He ought to have stopped the vehicle, given a priority of passage to the traffic on the main road and then approached the main road. The Tribunal has overlooked this aspect. Mr. Pandya also submitted that the Panchnama indicates that there was damage to right side mudguard of the scooter and, therefore, the theory of dashing from behind by the bus also ought not to have been accepted. Learned Advocate, Mr. Pandya, in all fairness, submitted that, so far as negligence part is concerned, it can be considered only in respect of claimant-Rameshchandra. His contribution to cause of accident can be viewed from two angles, firstly, that he permitted two pillion riders to ride on the scooter and, secondly, while driving, he did not follow the rules of traffic.

6.1 On quantum aspect, learned Advocate, Mr. Pandya, submitted that the Tribunal has awarded a compensation of Rs.2500/- each, under the head of pain, shock and suffering, in Claim Applications No.411 and 412 of 1982, on account of death of

Jasumatiben and minor-Milind, on the ground that the claimant underwent a mental agony on witnessing the accident. There is lack of evience to show that witnessing the accident had resulted into some psychiatric illness and, therefore, the compensation under this head ought not to have been awarded.

6.2 Mr. Pandya submitted that, in each of the fatal accidents, an amount of Rs.7500/-, under the head of loss of expectation of life is awarded. Around the period when the accident occurred and when it was decided, the amount awarded under this head was assessed at Rs.5,000/-.

6.3 Mr. Pandya submitted that, while awarding compensation under the head of future loss of dependency in case of death of minor-Milind, the Tribunal has ignored the principle enunciated in the case of **Somabhai Vajabhai v. Babubhai Bhailalbhai & Ors., 1982(1) GLR 785**, of deducting 2/3rd of the income of the deceased as amount likely to be spent by him after his family, which ought to have been considered by the Tribunal.

6.4 Learned Advocate, Pandya, therefore, submitted that these aspects, if considered, would result into reduction of the award.

7. This Court has taken into consideration various contentions raised by learned Advocate, Mr. Pandya, appearing on behalf of the appellant.

8. The Tribunal has awarded an amount of Rs.2500/- under the head of pain, shock and suffering in each of the claim in respect of death of Jasumatiben and minor-Milind, on a premise that the accident was witnessed by Rameshchandra and he must have suffered mental agony. In this regard, it would be appropriate to refer to the decision rendered by a Division Bench of this Court in the case of **Union Co-operative Insurance Society Ltd. v. Bhartiben, widiow of Hasmukhlal Narmadashankar & Others, XIX GLR 820**. The Division Bench had before it a very similar question and it was held that there must be a positive evidence showing something more than mere sorrow or grief. That additional element must have taken the form of any recognizable psychiatric illness attributable to having actually witnessed the accident. Now, in this regard, if the evidence before the Tribunal is seen, deposition of Rameshchandra is recorded at Ex.30. In his examination-in-chief, he says that he was deeply shocked on seeing the dead bodies of his wife and son. Barring this, the claimant has not adduced any evidence to show that he underwent any psychiatric illness or ailment on account of having seen the accident. The Tribunal, therefore, erred in awarding compensation

under the head of pain, shock and suffering in both the matters, quantifying the same at Rs.2500/- in each case.

9. So far as quantification of compensation under the head of loss of expectation of life is concerned, although it is canvassed that around the time when the accident occurred, conventionally, the amount was assessed at Rs.5000/-, in the opinion of this Court, when the Tribunal has assessed it at Rs.7500/-, it cannot be considered as unduly high and no interference in that regard is called for.

10. So far as the award of compensation under the head of loss of dependency in Motor Accident Claim Petition No.412 of 1982, on account of death of minor-Milind, is concerned, the Tribunal has assessed it at Rs.36,000/- adopting a multiplier of 15. There appears not any reason to interfere with the award so far as assessment of income of the deceased is concerned, but while quantifying the dependency loss, the Tribunal ought to have deducted 2/3rd of the said amount as the amount likely to be spent by the deceased for his self and his family, as considered in the case of **Somabhai Vajabhai v. Babubhai Bhailalbhai & Ors., 1982(1) GLR 785**. This would reduce the dependency loss to Rs.12,000/-. The award, therefore, will have to be reduced to that extent.

11. So far as the question of negligence is concerned, which will have direct bearing on claim of Rameshchandra, this Court has gone through the evidence on record. It is to be noted that, from the evidence it emerges that the accident occurred after the scooterist emerged on the main road and became part of the main street and, while he was travelling towards Vadodara, he was knocked down by the bus. It also appears that there is no controversy that the accident occurred where a pool of blood was found and that pool of blood was at a distance of 50 feet from the junction. It also appears that the bus had stopped at a distance of about 48 feet from the pool of blood. This would reflect the speed at which the bus was going and would reflect that the accident occurred while both the vehicles were travelling in same direction. By necessary inference, it would indicate that the scooterist was knocked down from behind, may be by a side sweep, as it is reflected from damage to right side mudguard of the scooter. It is also to be borne in mind that bus is a heavier vehicle and the driver of the bus owes greater degree of care and caution and greater regards towards rules of traffic. Under the circumstances, the contention raised by the appellant regarding contributory negligence on the part of Rameschandra cannot be accepted.

12. In the result, First Appeal No.614 of 1985 fails in toto

and is dismissed. First Appeal No.613 of 1985 is partly allowed. The award is reduced by Rs.26,500/- with proportionate costs and interest. So far as First Appeal No.612 of 1985 is concerned, it is also partly allowed and the award is reduced by Rs.2500/- with proportionate costs and interest. Rest of the award remains intact. No costs.

[A. L. DAVE, J.]

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